



April 3, 2007

ENGROSSED SENATE BILL No. 207

DIGEST OF SB 207 (Updated March 28, 2007 1:33 pm - DI 14)

Citations Affected: IC 16-18; IC 16-40; IC 34-30; noncode.

Synopsis: Medical adverse event reporting. Requires the state department of health, subject to appropriation by the general assembly, to enter into an agreement with an agency to collect, analyze, interpret, and disseminate findings on a statewide basis until June 30, 2010, regarding patient safety. Makes it voluntary for certain persons to submit information to the agency and makes the reports and certain other information confidential and privileged. Requires the state department of health to use standards for infections that have been adopted by a national consensus organization, and report to the health finance commission before September 1, 2007 and September 1, 2008, concerning the implementation of the program.

Effective: July 1, 2007.

Dillon, Hershman

(HOUSE SPONSORS — WELCH, BROWN T, ORENTLICHER, BROWN C)

January 8, 2007, read first time and referred to Committee on Health and Provider Services.

February 22, 2007, amended, reported favorably — Do Pass.

February 26, 2007, read second time, amended, ordered engrossed. Engrossed.

February 27, 2007, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 6, 2007, read first time and referred to Committee on Public Policy.

April 3, 2007, amended, reported — Do Pass.

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April 3, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 207

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-10, AS AMENDED BY SEA 526-2007,
2 SECTION 167, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) "Agency", for purposes of
4 IC 16-23.5, has the meaning set forth in IC 16-23.5-1-2.
5 (b) "Agency", for purposes of IC 16-40-5, has the meaning set
6 forth in IC 16-40-5-1.
7 (c) "Agency", for purposes of IC 16-41-37, has the meaning set forth
8 in IC 16-41-37-1.
9 SECTION 2. IC 16-18-2-161 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 161. (a) "Health care
11 facility" includes:
12 (1) hospitals licensed under IC 16-21-2, private mental health
13 institutions licensed under IC 12-25, and tuberculosis hospitals
14 established under IC 16-11-1 (before its repeal);
15 (2) health facilities licensed under IC 16-28; and
16 (3) rehabilitation facilities and kidney disease treatment centers.
17 (b) "Health care facility", for purposes of IC 16-28-13, has the

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1 meaning set forth in IC 16-28-13-0.5.

2 (c) "Health care facility", for purposes of IC 16-40-5, has the
3 meaning set forth in IC 16-40-5-2.

4 SECTION 3. IC 16-40-5 IS ADDED TO THE INDIANA CODE AS
5 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2007]:

7 **Chapter 5. Patient Safety Programs**

8 **Sec. 1. As used in this chapter, "agency" means:**

9 (1) an independent entity:

10 (A) that certifies that it meets the criteria under 42 U.S.C.
11 299b-24 as a patient safety organization and whose
12 certification has been accepted by the federal Department
13 of Health and Human Services; or

14 (B) that has been determined by the state department to
15 satisfy the criteria in 42 U.S.C. 299b-24 for certification as
16 a patient safety organization to a degree sufficient to
17 enable the entity to perform the activities of an agency
18 under this chapter; or

19 (2) an academic institution if:

20 (A) the academic institution is most qualified; or

21 (B) there is not an independent entity as described in
22 subdivision (1).

23 **Sec. 2. As used in this chapter, "health care facility" includes the**
24 **following:**

25 (1) An abortion clinic licensed under IC 16-21-2.

26 (2) An ambulatory outpatient surgical center licensed under
27 IC 16-21-2.

28 (3) A birthing center licensed under IC 16-21-2.

29 (4) A hospital licensed under IC 16-21-2.

30 (5) An office-based setting under IC 25-22.5-2-7(10) including
31 a facility, clinic, center, office or other setting where
32 procedures are performed that require moderate sedation,
33 deep sedation, general anesthesia, or regional anesthesia.

34 **Sec. 3. As used in this chapter, "personnel of the agency" means**
35 **the agency's directors, officers, employees, representatives, agents,**
36 **attorneys, investigators, assistants, clerks, staff, and any other**
37 **individual or organization serving the agency in any capacity.**

38 **Sec. 4. (a) Subject to appropriation by the general assembly, the**
39 **state department shall enter into an agreement with an agency that**
40 **collects, analyzes, interprets, and disseminates findings on a**
41 **statewide basis regarding patient safety that are based on**
42 **confidential and privileged information voluntarily submitted to**

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the agency by:

- (1) a health care facility;
- (2) a health care professional; or
- (3) an individual.

(b) The state department shall ensure that the agency's board has sufficient procedures in place to allow the agency to fairly, objectively, and accurately perform the duties set forth in the agency's contract under this chapter with the state department.

(c) Information submitted by the agency to the state department may not contain information that identifies the health care provider or the patient.

(d) The agency shall analyze data, develop policies, and disseminate and assist in the implementation of procedures that enhance patient safety.

Sec. 5. A health care facility, a health care professional, or an individual may file with the agency referred to in section 4 of this chapter a report that alleges that a health care facility or a health care professional, by an action taken or a failure to act, caused or could have caused harm to a patient, including harm that resulted from or could have resulted from:

- (1) an adverse drug event; or
- (2) an unexpected infection, including an infection that was probably acquired in the health care facility.

Sec. 6. (a) Except as provided in subsections (d) and (e), the following are confidential and privileged from use as evidence in an administrative or a judicial proceeding:

- (1) Oral or written information or reports given to the agency.
- (2) Proceedings, records, deliberations, and findings of the agency;

that are generated, undertaken, or performed as a result of a report described in section 5 of this chapter or under the agreement described in section 4(a) of this chapter.

(b) Neither the personnel of the agency nor any participant or witness in an agency proceeding or deliberation may disclose to a person outside of the agency the contents of:

- (1) communications to the agency;
- (2) agency records; or
- (3) agency findings;

that are generated, undertaken, or performed as a result of a report described in section 5 of this chapter or under the agreement described in section 4(a) of this chapter.

(c) Information that is otherwise discoverable or admissible

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from original sources is not immune from discovery or use in any proceeding merely because it was presented during proceedings or deliberations of the agency. Neither the personnel of the agency nor any participant or witness in any agency proceeding or deliberation may be prevented from testifying:

- (1) as to matters within the individual's own knowledge; and
- (2) in accordance with the other provisions of this chapter.

However, a witness cannot be questioned about testimony on other matters before the agency or about opinions formed by the witness as a result of the agency's proceedings or deliberations.

(d) The agency may disclose information concerning patient safety or quality of health care matters addressed in the agreement described in section 4(a) of this chapter if the information does not disclose any of the following:

- (1) The identity of the health care facility, health care provider, or patient.
- (2) The identity of a person that provided information to the agency.
- (3) Information that could reasonably be expected to result in the identification of a health care facility, health care provider, patient, or person that has provided information to the agency.

(e) Information or material that is confidential and privileged under this section may be used as evidence in a criminal proceeding only if the court first makes an in camera determination that the information:

- (1) is relevant to the criminal proceeding;
- (2) is material to the proceeding; and
- (3) is not reasonably available from another source.

Sec. 7. The state department may adopt rules under IC 4-22-2 to administer this chapter.

Sec. 8. This chapter expires June 30, 2010.

SECTION 4. IC 34-30-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) **Except as provided in subsection (e)**, all proceedings of a peer review committee are confidential.

(b) All communications to a peer review committee shall be privileged communications.

(c) **Except as provided in subsection (e)**, neither the personnel of a peer review committee nor any participant in a committee proceeding shall reveal any content of:

- (1) communications to;

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- 1 (2) the records of; or
 2 (3) the determination of;
 3 a peer review committee outside of the peer review committee.
 4 (d) However, the governing board of:
 5 (1) a hospital;
 6 (2) a professional health care organization;
 7 (3) a preferred provider organization (including a preferred
 8 provider arrangement or reimbursement agreement under
 9 IC 27-8-11); or
 10 (4) a health maintenance organization (as defined in
 11 IC 27-13-1-19) or a limited service health maintenance
 12 organization (as defined in IC 27-13-34-4);
 13 may disclose the final action taken with regard to a professional health
 14 care provider without violating the provisions of this section.
 15 **(e) Upon approval by the health care facility's governing body,**
 16 **the peer review committee of a health care facility (as defined in**
 17 **IC 16-40-5-2) may submit or disclose to the agency (as defined in**
 18 **IC 16-40-5-1) the following for purposes of patient safety or quality**
 19 **of health care matters in the agreement:**
 20 (1) Communications to the peer review committee.
 21 (2) Peer review committee proceedings.
 22 (3) Peer review committee records.
 23 (4) Determinations by the peer review committee.
 24 **Information and materials disclosed to the agency under this**
 25 **subsection are confidential and privileged from use as evidence in**
 26 **an administrative or judicial proceeding, and notwithstanding**
 27 **IC 16-40-5, the agency may not release the information or material**
 28 **outside the agency. However, the agency may issue a report that is**
 29 **based upon information submitted or disclosed to the agency by a**
 30 **peer review committee if the report or any other information**
 31 **released does not disclose the identity of the health care facility,**
 32 **health care provider, or patient.**
 33 **(f) Upon its determination, the governing body of a hospital may**
 34 **report, as part of the hospital's quality assessment and**
 35 **improvement program, a determination of a peer review**
 36 **committee of the hospital regarding an adverse event concerning**
 37 **patient care to the state department of health or another state**
 38 **agency without:**
 39 (1) violating this section; or
 40 (2) waiving the confidentiality or privilege attached to the
 41 communications, proceedings, records, or deliberations of the
 42 peer review committee.

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1 SECTION 5. [EFFECTIVE JULY 1, 2007] (a) Notwithstanding
2 IC 16-40-4, the state department of health may, before December
3 31, 2008:

4 (1) study and develop a list of quality indicators for infections
5 that have been adopted or endorsed by a national consensus
6 organization for voluntary reporting by health care facilities
7 to the state department of health; and

8 (2) publish the indicators for use by health care facilities.

9 (b) The state department of health shall report to the health
10 finance commission established under IC 2-5-23-3 not later than
11 September 1 of each year concerning the implementation of
12 IC 16-40-5, as added by this act.

13 (c) This SECTION expires July 1, 2009.

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SENATE MOTION

Madam President: I move that Senator Hershman be added as second author of Senate Bill 207.

DILLON

 COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 207, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 4.

Page 1, line 8, delete "IC 16-40-5-2." and insert "**IC 16-40-5-1.**".

Page 1, delete lines 11 through 14.

Page 2, line 9, delete "IC 16-40-5-4." and insert "**IC 16-40-5-2.**".

Page 2, delete lines 14 through 17.

Page 2, line 18, delete "2." and insert "**1.**".

Page 2, delete lines 19 through 27, begin a new line block indented and insert:

(1) an independent entity that has been certified as a patient safety organization by the federal government; or

(2) an academic institution if:

(A) the academic institution is most qualified; or

(B) there is not a certified independent entity."

Page 2, line 28, delete "4." and insert "**2.**".

Page 2, line 28, delete "means" and insert "**includes**".

Page 2, delete lines 34 through 42.

Page 3, line 1, delete "(10)" and insert "**(4)**".

Page 3, delete lines 2 through 5.

Page 3, line 6, delete "5. The" and insert "**3. (a) Subject to appropriation by the general assembly, the**".

Page 3, line 7, delete "for the administration of this chapter." and insert "**that collects, analyzes, interprets, and disseminates findings on a statewide basis regarding patient safety that are based on confidential and privileged information voluntarily submitted to the agency by:**

(1) a health care facility;

(2) a health care professional; or

(3) an individual.

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(b) The state department shall ensure that the agency's board has sufficient procedures in place to allow the agency to fairly, objectively, and accurately perform the duties set forth in the agency's contract under this chapter with the state department.

(c) Information submitted by the agency to the state department may not contain information that identifies the health care provider or the patient.

(d) The agency shall analyze data, develop policies, and disseminate and assist in the implementation of procedures that enhance patient safety."

Page 3, delete lines 8 through 12.

Page 3, line 13, delete "(b)" and insert "Sec. 4."

Page 3, line 14, delete "5" and insert "3".

Page 3, line 22, delete "Sec. 7." and insert "Sec. 5."

Page 3, line 24, delete "6" and insert "4".

Page 3, line 34, delete "6" and insert "4".

Page 3, line 40, delete "6" and insert "4".

Page 4, delete lines 6 through 37.

Page 4, line 38, delete "12." and insert "6."

Page 5, line 22, delete "A health care facility (as defined in IC 16-40-5-4) may use a" and insert "A peer review committee of a health care facility (as defined in IC 16-40-5-2) may submit or disclose to the agency administering IC 16-40-5 the following for purposes of IC 16-40-5:

- (1) Communications to the peer review committee.
- (2) Peer review committee proceedings.
- (3) Peer review committee records.
- (4) Determinations by the peer review committee.

Except as provided in subsection (f), information and materials disclosed to the agency under this subsection are confidential and privileged, and the agency may not use or provide the information or material to anyone for use as evidence in an administrative or a civil proceeding.

(f) The agency may disclose information provided to the agency voluntarily under this chapter for use in a criminal proceeding if a court first makes an in camera determination that the information:

- (1) is relevant to the criminal proceeding;
- (2) is material to the proceeding; and
- (3) is not reasonably available from another source.

(g) The governing board of a hospital may report, as part of the hospital's quality assessment and improvement program, a

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determination of a peer review committee of the hospital regarding an adverse event concerning patient care to the state department of health or another state agency without violating this section."

Page 5, delete lines 23 through 38.

Page 5, line 42, delete "2007:" and insert "**2008:**".

Page 6, line 2, delete "where the state department of health determines" and insert "**publish the indicators for use by health care facilities.**".

Page 6, delete line 3.

Page 6, line 4, after "(b)" insert "**The state department of health shall report to the health finance commission established under IC 2-5-23-3 not later than September 1 of each year concerning the implementation of IC 16-40-5, as added by this act.**

(c)".

Page 6, line 4, delete "2008." and insert "**2009.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 207 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 11, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 207 be amended to read as follows:

Page 3, between lines 32 and 33, begin a new paragraph and insert: "**Sec. 7. This chapter expires June 30, 2010.**".

(Reference is to SB 207 as printed February 23, 2007.)

DILLON

SENATE MOTION

Madam President: I move that Senate Bill 207 be amended to read as follows:

Page 2, between lines 18 and 19, begin a new line block indented and insert:

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"(5) An office-based setting under IC 25-22.5-2-7(10) including a facility, clinic, center, office or other setting where procedures are performed that require moderate sedation or analgesia, deep sedation or analgesia, general anesthesia, or regional anesthesia."

(Reference is to SB 207 as printed February 23, 2007.)

DILLON

SENATE MOTION

Madam President: I move that Senate Bill 207 be amended to read as follows:

Page 2, line 7, delete "entity that has been certified as a patient" and insert **"entity:**

(A) that certifies that it meets the criteria under 42 U.S.C. 299b-24 as a patient safety organization and whose certification has been accepted by the federal Department of Health and Human Services; or

(B) that has been determined by the state department to satisfy the criteria in 42 U.S.C. 299b-24 for certification as a patient safety organization to a degree sufficient to enable the entity to perform the activities of an agency under this chapter; or"

Page 2, delete line 8.

Page 2, line 11, delete "a certified" and insert **"an"**.

Page 2, line 11, delete "." and insert **"as described in subdivision (1)."**

Page 2, line 40, delete "an incident" and insert **"a"**.

Page 3, line 5, delete "for information in an incident report that" and insert **"as provided in subsections (d) and (e), the following are confidential and privileged from use as evidence in an administrative or a judicial proceeding:**

(1) Oral or written information or reports given to the agency.

(2) Proceedings, records, deliberations, and findings of the agency.

(b) The agency may not disclose to a person outside of the agency the contents of:

(1) communications to the agency;

(2) agency records; or

(3) agency determinations;

that are generated, undertaken, or performed as a result of a

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report described in section 4 of this chapter or under the agreement described in section 3(a) of this chapter.

(c) A person who has participated in an agency proceeding or deliberation may not disclose to a person outside of the agency:

- (1) matters or opinions related to the agency's proceedings or deliberations; or
- (2) the contents of any confidential or privileged information that the person obtains and that consists of information that was not provided to the agency by the person.

However, the person may disclose information that the person provided to the agency.

(d) The agency may disclose information concerning patient safety or quality of health care matters addressed in the agreement described in section 3(a) of this chapter if the information does not disclose any of the following:

- (1) The identity of the health care facility, health care provider, or patient.
- (2) The identity of a person that provided information to the agency.
- (3) Information that could reasonably be expected to result in the identification of a health care facility, health care provider, patient, or person that has provided information to the agency.

(e) Information or material that is confidential and privileged under this section may be used as evidence in a criminal proceeding only if the court first makes an in camera determination that the information:

- (1) is relevant to the criminal proceeding;
- (2) is material to the proceeding; and
- (3) is not reasonably available from another source."

Page 3, delete lines 6 through 30.

Page 4, line 15, delete "A" and insert "**Upon approval by the health care facility's governing body, the**".

Page 4, line 17, delete "administering IC 16-40-5".

Page 4, line 17, delete "IC 16-40-5:" and insert "**patient safety or quality of health care matters in the agreement:**".

Page 4, line 26, delete "civil" and insert "**judicial**".

Page 4, line 26, after "proceeding." insert "**However, the agency may issue a report that is based upon information submitted or disclosed to the agency by a peer review committee if the report or any other information released does not disclose the identity of the health care facility, health care provider, or patient.**".

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Page 4, delete lines 27 through 33.

Page 4, line 34, delete "(g)" and insert "(f)".

Page 4, line 34, delete "board" and insert "**body**".

Page 4, line 38, after "without" insert ":

(1)".

Page 4, line 38, delete "." and insert "; or

(2) waiving the confidentiality or privilege attached to the communications, proceedings, records, or deliberations of the peer review committee."

(Reference is to SB 207 as printed February 23, 2007.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 207, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 1, delete "P.L. 101-2006," and insert "SEA 526-2007, SECTION 167,"

Page 1, line 2, delete "SECTION 23,".

Page 1, line 3, delete "(a)" and insert "(a) Agency", for purposes of IC 16-23.5, has the meaning set forth in IC 16-23.5-1-2.

(b)".

Page 1, line 5, delete "(b)" and insert "(c)".

Page 2, line 30, delete "sedation or" and insert "**sedation,**".

Page 2, line 31, delete "analgesia, deep sedation or analgesia," and insert "**deep sedation,**".

Page 2, between lines 32 and 33, begin a new paragraph and insert:

"Sec. 3. As used in this chapter, "personnel of the agency" means the agency's directors, officers, employees, representatives, agents, attorneys, investigators, assistants, clerks, staff, and any other individual or organization serving the agency in any capacity."

Page 2, line 33, delete "3." and insert "4".

Page 3, line 10, delete "4." and insert "5".

Page 3, line 11, delete "3" and insert "4".

Page 3, line 19, delete "5." and insert "6".

Page 3, line 24, delete "agency." and insert "**agency;**



that are generated, undertaken, or performed as a result of a report described in section 5 of this chapter or under the agreement described in section 4(a) of this chapter."

Page 3, line 25, delete "The agency" and insert **"Neither the personnel of the agency nor any participant or witness in an agency proceeding or deliberation"**.

Page 3, line 25, delete "not".

Page 3, line 29, delete "determinations;" and insert **"findings;"**.

Page 3, line 31, delete "4" and insert **"5"**.

Page 3, line 32, delete "3(a)" and insert **"4(a)"**.

Page 3, line 33, delete "A person who has participated in an agency proceeding or" and insert **"Information that is otherwise discoverable or admissible from original sources is not immune from discovery or use in any proceeding merely because it was presented during proceedings or deliberations of the agency. Neither the personnel of the agency nor any participant or witness in any agency proceeding or deliberation may be prevented from testifying:**

(1) as to matters within the individual's own knowledge; and

(2) in accordance with the other provisions of this chapter.

However, a witness cannot be questioned about testimony on other matters before the agency or about opinions formed by the witness as a result of the agency's proceedings or deliberations."

Page 3, delete lines 34 through 41.

Page 4, line 2, delete "3(a)" and insert **"4(a)"**.

Page 4, line 19, delete "6." and insert **"7."**.

Page 4, line 21, delete "7." and insert **"8."**.

Page 5, line 6, after "agency" insert **"(as defined in IC 16-40-5-1)"**.

Page 5, line 13, delete "Except as provided in subsection (f), information" and insert **"Information"**.

Page 5, line 15, delete "," and insert **"from use as evidence in an administrative or judicial proceeding, and notwithstanding IC 16-40-5, the agency may not release the information or material outside the agency."**

Page 5, line 15, delete "and the agency may not use or provide the information".

Page 5, delete line 16.

Page 5, line 17, delete "a judicial proceeding."

Page 5, run in lines 15 through 17.

Page 5, line 22, delete "The" and insert **"Upon its determination, the"**.

Page 5, line 32, delete "as part of the health care quality indicator

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data".

Page 5, line 33, delete "program,".

Page 5, line 33, delete "shall," and insert "**may**,".

Page 5, line 35, after "develop" insert "**a list of**".

Page 5, line 35, delete "infections;" and insert "**infections that have been adopted or endorsed by a national consensus organization for voluntary reporting by health care facilities to the state department of health;**".

and when so amended that said bill do pass.

(Reference is to SB 207 as reprinted February 26, 2007.)

VAN HAAFTEN, Chair

Committee Vote: yeas 9, nays 1.

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